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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/027,867	02/23/98	CARROLL	F 2734-CIP-Z

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QM32/0127

EXAMINER

PATTERSON, M

ART UNIT	PAPER NUMBER
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3728

17

DATE MAILED:

01/27/00

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GROUP 3200

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 17

Application Number: 09/027867
Filing Date: 2/23/98
Appellant(s): Francis C. Carroll

Jim Zegeer
For Appellant

EXAMINER'S ANSWER

This is in response to appellant's brief on appeal filed 12/29/99.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

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The brief contains a statement identifying that there are no related appeals and interferences which will directly affect this application.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is substantially correct. The changes are as follows: The issue numbered 2 is not an issue because claim 12 was canceled in the After Final Amendment filed 6/29/99.

(7) *Grouping of Claims*

The rejection of claims 1, 2, 5, 6, 9, 10, 15, 16, and 21 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

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(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

The following is a listing of the prior art of record relied upon in the rejection of claims under appeal.

Softspikes advertisement "A Unique Holiday Offer", Golf Digest,
December 1996, page 149.

4,375,728	DASSLER	3-1983
4,014,114	JORDAN ET AL	3-1977
5,321,901	KELLY	6-1994
4,327,503	JOHNSON	5-1982
5,581,913	KATAOKA ET AL	12-1996

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(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 1, 15, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Softspikes (A Unique Holiday Offer article) in view of Dassler (4,375,728).

Softspikes shows a cleat with a threaded stud and a plurality of peripheral teeth substantially as claimed, except for the peripheral teeth being angled outwardly. Dassler clearly teaches outwardly angling teeth (2-4) of a cleat (1). It would have been obvious to outwardly angle the teeth as taught by Dassler in the cleat of Softspikes to increase cushioning, and to provide traction and skid resistance in all directions.

2. Claims 2, 5 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1, 15, and 21 above, and further in view of Kelly or Jordan.

Softspikes as modified above shows a cleat substantially as claimed except for an anti-debris ring. Kelly or Jordan '114 teaches providing an anti-debris ring (24 or 7). It would have been obvious to provide an anti-debris ring as taught by either Kelly or Jordan in the cleat of Softspikes as modified above to prevent debris from getting between the cleat body and the shoe sole.

3. Claims 6 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 2, 5 and 9 above, and further in view of either Johnson or Kataoka '913.

Softspikes as modified above shows a cleat substantially as claimed except for the exact shape of the peripheral teeth. Johnson or Kataoka teaches shaping projection teeth with one cone

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shaped surface (40 or 44) and the other side being pyramid shaped (44 or 43, figure 14a). It would have been obvious to form the teeth with one cone shaped surface and one pyramid surface as taught by either Johnson or Kataoka in the cleat of Softspikes as modified above to prevent damage to the turf and to make the teeth safer to participants.

4. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1, 15, and 21 above, and further in view of either Johnson or Kataoka '913.

Softspikes as modified above shows a cleat substantially as claimed except for the exact shape of the peripheral teeth. Johnson or Kataoka teaches shaping projection teeth with one cone shaped surface (40 or 44) and the other side being pyramid shaped (44 or 43, figure 14a). It would have been obvious to form the teeth with one cone shaped surface and one pyramid surface as taught by either Johnson or Kataoka in the cleat of Softspikes as modified above to prevent damage to the turf and to make the teeth safer to participants.

(11) Response to Argument

In response to applicants' statement that alleges that the Examiner sketched the side view on the Softspikes reference, this is inaccurate. The Examiner did not sketch anything on the Softspikes references. The origin of the sketch of the side view is unknown. However, the side view is well known to be that sketched, since the softspike cleat is extremely well known and has been for sale (tens of thousands if not hundreds of thousands of these have been sold in the US) in the art of golf shoes and cleats.

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In response to applicants' arguments directed towards the intended use of the shoe and cleats of Dassler, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Also, Dassler is directed towards "sports shoes" which clearly includes golf shoes, i.e. shoes worn for the sport of golf.

In response to applicants' arguments that Dassler is not directed towards or obvious to combine with cleats which are attached to a shoe with elements to receive cleats, Dassler clearly suggests making the cleats separate from the sole and attaching the two elements (column 4 lines 32-35).

In response to applicants' arguments that the "teeth" of Dassler are cushioning spring arms, even though this may be true it does not negate the fact that the "teeth" of Dassler also provide skid resistance as stated in column 3 lines 24-26.

In response to applicants' arguments directed towards the material used in Dassler, Dassler clearly states that the "studs or cleats" are made of a material that is "relatively hard and therefore wear resistant" (column 1 lines 39-42). Contrary to applicants' arguments there is no reference in Dassler to cotton or wool. This argument is not understood and is not persuasive.

In response to applicants argument that the cleats of Dassler could not be made of relatively hard material because it is molded, this is not persuasive. It is noted that applicant states (on page 6 line 5) that the disclosed cleat with angled teeth is made by molding of relatively hard

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material. It would appear that if applicants device can be molded that the device of Dassler also can be molded.

In response to applicants' arguments directed towards the specific embodiment in Dassler shown in figure 4, these arguments are not persuasive and the relevance of these arguments is not understood.

In response to applicants' arguments that Dassler is only directed towards a cleat for use on hard surfaces, this is not true. Dassler specifically states "the sole of the invention is especially suitable to long-distance running in all kinds of difficult terrains, especially to cross-country running" (column 4 lines 41-43)

In response to applicants' arguments directed towards the angles of the teeth is Dassler change according to the pressure placed on them and the surface, this argument is not understood and not persuasive. The fact that the angle of the teeth of Dassler are capable of changing does not negate the fact that Dassler teaches providing angled teeth.

In response to Applicant's argument that the Examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgement on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the

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time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. *In re McLaughlin*, 443 F.2d 1392; 170 USPQ 209 (CCPA 1971).

In response to applicants' arguments directed towards claim 12, these arguments are moot because claim 12 has been canceled.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

MDP
January 24, 2000


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Primary Examiner

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